

- DECISION -

Claimant:	Decision No.:	5634-BR-12
DORETHEA FINNEY	Date:	February 20, 2013
	Appeal No.:	1141365
	S.S. No.:	
Employer:	L.O. No.:	65
	Appellant:	Claimant

Issue: Whether the claimant had earned, during the base period, wages equal to or greater than 1 1/2 times the claimant's highest quarter earnings to qualify for Extended Unemployment Compensation within the meaning of MD Code Annotated, Labor and Employment Article, Title 8, Section 1104(d).

- NOTICE OF RIGHT OF APPEAL TO COURT -

You may file an appeal from this decision in the Circuit Court for Baltimore City or one of the Circuit Courts in a county in Maryland. The court rules about how to file the appeal can be found in many public libraries, in the Maryland Rules of Procedure, Title 7, Chapter 200.

The period for filing an appeal expires: March 22, 2013

REVIEW OF THE RECORD

After a review of the record, and after deleting the last two paragraphs, the Board adopts the hearing examiner's modified findings of fact. The Board makes the following additional findings of fact:

The claimant was hospitalized during the majority of the week beginning October 9, 2011. She made no job contacts that week. The claimant was unaware that the proper procedure would have been to close her claim for that week. Instead, when she filed her telecert, she honestly responded "no" to the question concerning whether she had conducted a job search. The claimant resumed her job search, making at least four job contacts each week, with the week beginning October 16, 2011.

The Board concludes that these facts warrant different conclusions of law and modification of the hearing examiner's decision.

The General Assembly declared that, in its considered judgment, the public good and the general welfare of the citizens of the State required the enactment of the Unemployment Insurance Law, under the police powers of the State, for the compulsory setting aside of unemployment reserves to be used for the benefit of individuals unemployed through no fault of their own. *Md. Code Ann., Lab. & Empl. Art., § 8-102(c)*. Unemployment compensation laws are to be read liberally in favor of eligibility, and disqualification provisions are to be strictly construed. *Sinai Hosp. of Baltimore v. Dept. of Empl. & Training, 309 Md. 28 (1987)*.

The Board reviews the record *de novo* and may affirm, modify, or reverse the findings of fact or conclusions of law of the hearing examiner on the basis of evidence submitted to the hearing examiner, or evidence that the Board may direct to be taken, or may remand any case to a hearing examiner for purposes it may direct. *Md. Code Ann., Lab. & Empl. Art., § 8-510(d); COMAR 09.32.06.04*. The Board fully inquires into the facts of each particular case. *COMAR 09.32.06.03(E)(1)*.

Md. Code Ann., Lab. & Empl. art., Section 1104(f)(1) provides that an individual who receives extended benefits, shall (1) make a sustained and systematic effort throughout the week to find work; and (2) submit tangible evidence of the effort to the Secretary.

Md. Code Ann., Lab. & Empl. art., Section 1108(a) provides that an individual is disqualified from receiving extended benefits if the individual fails to comply with the requirement of *Section 1104(f)(1)* unless the failure results from (1) a summons to appear for jury duty before a court of the United States or of a state; or (2) hospitalization of the individual for emergency treatment or treatment of a life-threatening situation.

Md. Code Ann., Lab. & Empl. art., Section 1105(d) provides that an individual who is otherwise eligible to receive benefits may not be denied extended benefits for any week because the individual is in a training program that the United States Secretary of Labor approves under 19 U.S.C. Section 2296(a)(1).

In her appeal, the claimant reiterates her testimony from the hearing. She contends: "...my appeal is not being carefully read and considered or the appropriate way to submit a job search had been changed by the Hearing Examiner." The Board has conducted a thorough review of the evidence of record from the Lower Appeals hearing. The Board finds the hearing examiner erred in his analysis.

Clearly, the claimant was not eligible for benefits for the week beginning October 9, 2011. The claimant honestly responded to the question, knowingly preventing her from receiving benefits for that week. The claimant was not aware she should have closed and reopened her claim, but she should not be punished for this. The claimant reasonably believed she was required to complete the telecert for each week during her claim. The claimant was not eligible for benefits for the week of October 9, 2011, and did not receive benefits for that week because she stated she had not sought work.

The Board finds the hearing examiner placed a too stringent burden on the claimant, beyond that required in the law, concerning the information provided on her resumed work search. The law requires a person to conduct an active work search, designed to return that person to the workforce as soon as possible. There is no requirement for any specific details concerning that work search. The claimant was asked to provide information about her work search, and she did. The claimant was not asked to provide names, addresses, telephone, fax and emails; she was asked to provide verification that she had made at least four job contacts in each week following October 16, 2011. The Board finds the claimant complied with the Agency's request and the claimant complied with the requirements for continuing eligibility.

The hearing examiner stated that the law requires a claimant who is seeking benefits to make an active work search. That was correct. However, the hearing examiner failed to realize that, for the week beginning October 9, 2011, the claimant was not seeking benefits. Ergo, there was no requirement that the claimant seek work, be able to work, or be available for work.

The Board notes that the hearing examiner did not offer or admit the *Agency Fact Finding Report* into evidence. The Board did not consider this document when rendering its decision.

The Board finds based on a preponderance of the credible evidence that the claimant did not make a systematic and sustained search for work within the meaning of *Md. Code Ann., Lab. & Empl. art., Section 1104(f)(1)* for the week beginning October 9, 2011. The claimant must be disqualified from benefits for this benefit week.

The Board also finds based on a preponderance of the credible evidence that the claimant made a systematic and sustained search for work within the meaning of *Md. Code Ann., Lab. & Empl. art., Section 1104(f)(1)* for the week beginning October 16, 2011. The claimant shall be eligible for benefits for this benefit week and thereafter, provided she meets the other requirements of the law.

DECISION

THE BOARD HOLDS that the claimant did not make a systematic and sustained search for work within the meaning of *Md. Code Ann., Lab. & Empl. art., Section 1104(f)(1)* for the week beginning October 9, 2011. The claimant is disqualified from benefits for this benefit week.

THE BOARD HOLDS that the claimant made a systematic and sustained search for work within the meaning of *Md. Code Ann., Lab. & Empl. art., Section 1104(f)(1)* for the week beginning October 16, 2011. The claimant IS eligible for benefits for this benefit week and thereafter, provided she meets the other requirements of the law.

The hearing examiner's decision is modified.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

KJK

Copies mailed to:

DORETHERA FINNEY

SUSAN BASS DLLR

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS REMAND DECISION

DORETHERA FINNEY

SSN #

Claimant

Employer/Agency

Before the:

**Maryland Department of Labor,
Licensing and Regulation**

Division of Appeals

1100 North Eutaw Street

Room 511

Baltimore, MD 21201

(410) 767-2421

Appeal Number: 1141365

Appellant: Claimant

Local Office : 65 / SALISBURY

CLAIM CENTER

July 19, 2012

For the Claimant: PRESENT

For the Employer:

For the Agency: PRESENT, EILEEN SULLIVAN

ISSUE(S)

Whether the claimant has been making a systematic and sustained search for work within the meaning of Section 8-1104 of the Maryland Unemployment Insurance Law.

PREAMBLE

This matter was remanded by the Board of Appeals because the Board of Appeals was unable to review the audio recording of the December 05, 2011 hearing. As the audio recording has now been located, the original decision is being reissued to preserve the parties' right of appeal. Any party aggrieved by this decision may appeal to the Board of Appeals by following the instructions on the last page of this decision.

FINDINGS OF FACT

The claimant, Doretha Finney, filed a claim for unemployment insurance benefits establishing a benefit year beginning May 31, 2009, with a weekly benefit amount of \$380.00.

The claimant became eligible to receive extended benefits in Maryland effective October 2, 2011. At the time she filed for extended benefits, the Agency advised the claimant that the claimant was classified as having "Not Good" job prospects, which meant that she was required to make a "sustained and systematic" search for work. The Agency further advised that, under the Agency's interpretation, a "sustained and systematic" search for work means that the claimant must search for work on at least three (3) days per week and make a total of at least four (4) work search contacts each week.

From October 9, 2011, through October 15, 2011, the claimant did not make any job contacts. The claimant stated as the reason for this that she was hospitalized.

From October 16, 2011, through November 12, 2011, the claimant made four job contacts but failed to give specific names of the employers. The claimant gave fax numbers and email names.

CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp. Article, Section 1104(f)(1) provides that an individual who receives extended benefits, shall (1) make a sustained and systematic effort throughout the week to find work; and (2) submit tangible evidence of the effort to the Secretary.

Md. Code Ann., Labor & Emp. Article, Section 1108(a) provides that an individual is disqualified from receiving extended benefits if the individual fails to comply with the requirements of Section 1104(f)(1) of this subtitle unless the failure results from:

- (1) a summons to appear for jury duty before a court of the United States or of a state; or
- (2) hospitalization of the individual for emergency treatment or treatment of a life-threatening situation.

Md. Code Ann., Labor & Emp. Article, Section 1105(d) provides that an individual who is otherwise eligible to receive benefits may not be denied extended benefits for any week because the individual (1) is in a training program that the United States Secretary of Labor approves under 19 U.S.C. Section 2296(a)(1).

EVALUATION OF EVIDENCE

The Hearing Examiner considered all of the testimony and evidence of record in reaching this decision. Where the evidence was in conflict, the Hearing Examiner decided the facts on the credible evidence as determined by the Hearing Examiner.

The evidence establishes that the claimant did not make a systematic and sustained search for work within the meaning of the Maryland Unemployment Insurance Law, Section 8-1104(f) (1) during the week from October 9, 2011, through October 15, 2011. The law is clear and unequivocal that one who seeks benefits must make an active search for work during each week that he/she seeks benefits. It is not permissible to cease looking at any time while still in claim status. In the instant case, as the claimant has failed to make an active search for work, he/she will be disqualified from receiving benefits.

The evidence establishes that the claimant did not make a systematic and sustained search for work within the meaning of the Maryland Unemployment Insurance Law, Section 8-1104(f) (1) from October 16, 2011 through November 12, 2011. The law is clear and unequivocal that one who seeks benefits must make an active search for work during each week that one seeks benefits. It is not permissible to cease looking at any time while still in claim status. The claimant failed to give specific names of employers. The claimant gave fax numbers and email names.

DECISION

IT IS HELD THAT the claimant did not make a systematic and sustained search for work within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-1104(f)(1). Benefits are denied from the week beginning October 9, 2011, and until the claimant becomes re-employed and earns four times weekly benefit amount of \$380.00.

The determination of the Claims Specialist is reversed.



M I Pazornick, Esq.
Hearing Examiner

Notice of Right to Request Waiver of Overpayment

The Department of Labor, Licensing and Regulation may seek recovery of any overpayment received by the Claimant. Pursuant to Section 8-809 of the Labor and Employment Article of the Annotated Code of Maryland, and Code of Maryland Regulations 09.32.07.01 through 09.32.07.09, the Claimant has a right to request a waiver of recovery of this overpayment. This request may be made by contacting Overpayment Recoveries Unit at 410-767-2404. If this request is made, the Claimant is entitled to a hearing on this issue.

A request for waiver of recovery of overpayment does not act as an appeal of this decision.

Esto es un documento legal importante que decide si usted recibirá los beneficios del seguro del desempleo. Si usted disiente de lo que fue decidido, usted tiene un tiempo limitado a apelar esta decisión. Si usted no entiende cómo apelar, usted puede contactar (301) 313-8000 para una explicación.

Notice of Right of Further Appeal

Any party may request a further appeal either in person, by facsimile or by mail with the Board of Appeals. Under COMAR 09.32.06.01A (1) appeals may not be filed by e-mail.

Your appeal must be filed by August 03, 2012. You may file your request for further appeal in person at or by mail to the following address:

Board of Appeals
1100 North Eutaw Street
Room 515
Baltimore, Maryland 21201
Fax 410-767-2787
Phone 410-767-2781

NOTE: Appeals filed by mail are considered timely on the date of the U.S. Postal Service postmark.

Date of hearing: December 05, 2011
CEH/Specialist ID: USB2P
Seq No: 002
Copies mailed on July 19, 2012 to:
DORETHERA FINNEY
LOCAL OFFICE #65